

RECORDATION NO. 21211 FILED

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February 5, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are two (2) copies of a Locomotive Lease Agreement, dated as of August 1, 1997, a primary document as defined in the Board's Rules for the Recordation of Documents and two (2) copies of Chattel Paper and Equipment Purchase Agreement (Nonrecourse), a secondary document related thereto.

The names and addresses of the parties to the enclosed documents are:

Primary → Locomotive Lease

Lessor: LLX Rail, Inc.
1200 South State St.
Chicago Heights, IL 60411

Lessee: Philips Metals, Inc./Luria Brothers
20521 Chagrin Blvd.
Cleveland, OH 44122

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SURFACE TRANSPORTATION
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Counterpart -

Vernon A. Williams
February 5, 1998
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A →

Purchase Agreement

Buyer: Charter Financial, Inc.
153 East 53rd St.
New York, NY 10022

Seller: LLX Rail, Inc.
1200 South State St.
Chicago Heights, IL 60411

A description of the railroad equipment covered by the enclosed documents is:

two (2) locomotives LLX 150 and LLX 151.

Also enclosed is a check in the amount of \$48.00 payable to the order of the Surface Transportation Board covering the required recordation fees.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/bg
Enclosures

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LOCOMOTIVE LEASE AGREEMENT

This lease made and entered into as of this
1st day of August, 1997 by and between:

LLX Rail, Inc.,
An Illinois Corporation
"Lessor"

and

Philips Services/Luria Brothers
20521 Chagrin Blvd.
Cleveland OH 44122

LOCOMOTIVE LEASE AGREEMENT

LESSOR AND LESSEE AGREE AS FOLLOWS:

1. **LEASE:** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the locomotive described in Schedule "A", located at the Birmingham Steel facility in Memphis TN; attached hereto and made a part hereof, upon the terms and conditions herein set forth. This lease shall be binding only on the locomotive(s) described in Schedule "A".

The Lessee may stencil it's name on the Locomotive, but shall not remove or obscure Lessor's reporting marks.

2. **INSPECTION AND ACCEPTANCE:** Lessee acknowledges that it will inspect the Locomotive(s) at a mutually agreed upon location with the Lessor. At the time of said delivery, the locomotive shall be considered in good repair and operating condition. Such delivery and acceptance shall be acknowledged, in writing, by Lessee.

At the time of return of the locomotive to Lessor at Chicago Heights, Illinois, a joint inspection of the locomotive shall be performed and except as otherwise determined by said joint inspection each locomotive shall be considered to be in good repair and operating condition at the time the locomotive is returned to Lessor.

3. **RENTAL:** Lessee shall pay to Lessor's assignee as rental for each locomotive the sum outlined in Schedule A for each 30 day period or from the time that each locomotive is delivered to Lessee at a mutually agreed interchange point, (hereinafter called "Rent Commencement Date"), until same is returned to Lessor at the expiration of the lease term. Lessor shall render a monthly bill to Lessee for said rental and Lessee shall pay same within thirty (30) days of receipt thereof.

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupments of defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any pact, present or future claims of Lessee against Lessor or any other person for any reason of any defect in the condition, design, operation or fitness for use of any locomotive damage to or loss of possession or use or destruction of all or any of such Locomotives from whatever cause and of whatever duration.

4. **TERM:** The term of this lease shall begin on the Rent Commencement Date and continue for a minimum period of sixty (60) months.

In the event Lessee desires to extend the term of this lease, Lessee shall give Lessor ninety (90) days notice in writing prior to its termination. It is understood that any extension of the lease may have substantially different terms. Payment will be made in U.S. funds.

5. **PLACE OF PAYMENT OF RENT:** Lessee shall direct payment of the monthly rent to the following address:

LLX Rail, Inc.
1200 South State Street
Chicago Heights, IL 60411

6. **LOSS OR DESTRUCTION:** Lessee agrees that it will be solely responsible for any loss, damage or destruction due to accident, derailment, collision or inappropriate use of any locomotive leased from Lessor while subject to this lease. In case any of the Locomotive(s), during the term of the lease period become lost, destroyed or damaged beyond repair from any cause whatsoever, rental with respect to any such locomotive shall not cease. In the case of any such loss, Lessee will provide substitute equipment, which shall be

acceptable to Lessor, or shall pay an amount to the Lessor which is agreeable total of the lease rentals remaining due.

7. **INSURANCE:** (a) Subject to the limitations set forth in Section 8, all risk of loss of, damage to, or destruction of the Locomotives shall at all times be on Lessee except for loss, damage or destruction resulting from a negligent act or omission of Lessor.

(b) Lessee shall provide (1) Insurance against loss, theft, and destruction or damage of the equipment, and (2) comprehensive public liability insurance against claims for personal injuries, death and property damage in no event less comprehensive in amount against risk customarily insured against by Lessee in respect of similar equipment owned or leased by it. Lessee shall pay applicable premiums for insurance. Lessee shall have the right to insure the Locomotive(s) for its own account, for the amount by which its fair market value exceeds the coverage required hereunder and LLX Rail, INC. or its' designated assignee, shall be named beneficiary.

(c) All insurance policies required hereunder shall (1) cover the interests of Lessee and Lessor and protect Lessee and Lessor in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Locomotive(s), (2) provide that the insurance carrier endeavor to mail at least 30 days prior notice in the event of cancellation or material alternation in coverage, (3) provide, as such to physical damage insurance, that the losses, if any, shall be payable to Lessor under a standard long form loss payable clause, (4) provide that in respect of the interest of the Lessor in such policies, the insurance shall not be invalidated by an action or inaction of Lessee and shall insure Lessor's interest as it appears regardless of any breach or violation by Lessee of any warranty, declaration or condition contained in such policies, and shall include coverage against liability which Lessor might incur by reason of the operation of the locomotive(s), and (5) not required co-insurance.

8. **COMPLIANCE WITH LAW: REPAIR MAINTENANCE AND LIENS:** Lessee shall comply with all applicable governmental laws, regulations and requirements and other binding regulations with respect to use, and transport of the Locomotive(s) during the lease period.

The Lessee shall use the Locomotive(s) only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee will not permit any liens or encumbrances to be placed on the Locomotive(s) and will promptly take action, at it's own expenses, to remove and discharge any liens that may placed on the Locomotive(s).

9. **INDEMNITY:** Subject to the obligations and undertakings of the Lessor specified in Section 14 of this lease, Lessee does hereby release, indemnify and save harmless Lessor, its successors and assigns from and against any claim and all liability, loss, cost, damage, charges, attorney fees, and expense which Lessor may incur, suffer or in any way be subjected to, resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of or damage to any property whatsoever of any person, firm or corporation including but not limited to the property of the parties hereto or in the care or custody of the parties hereto and from any and all claims, demands, or actions for such loss, injury or damage, caused by growing out of or in any way connected with the equipment by Lessee except when attributable to the fault, failure or negligence of Lessor or otherwise. The foregoing release and indemnification shall apply to matters or things occurring only between the time the Locomotive(s) are delivered to Lessee and the time they are re-delivered to Lessor (save and except while any Locomotive(s) are within the Lessor's possession).

10. **ASSIGNMENT:** Lessee shall not assign or sublet its interest, or any part thereof, under this lease, or permit the use or operation of any locomotive subject to this lease by any other person, firm, corporation or locations. Lessor may at any time assign all or any portion of the rents due or to become due and/or the leased property without notice to Lessee and in such an event Lessor's transferee and remedies of the Lessor hereunder. Lessee shall have a continuing obligation to pay Lessor and shall continue to pay Lessor until such time as notice of such assignment is given to Lessee.

11. NOTICE: Unless otherwise specifically provided, any notices to be given under this lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

1) VP Finance and Administration
Philips Services/Luria Brothers
20521 Chagrin Blvd.
Cleveland OH 44122

2) Yard Manager
3601 River Port Rd.
Memphis, TN 38109

or to such other address as Lessee may from time to time indicated by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

LLX RAIL, INC.
1200 S. State St.
Chicago Heights, Illinois 60411

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

12. QUIET ENJOYMENT: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotive(s) according to the terms hereof without interference by Lessor or by any party lawfully claiming by or through the Lessor.

13. AUTHORITY: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this lease and bind the respective parties to the terms and provisions hereof.

14. LATE CHARGES: Delinquent installments of rent shall bear interest at the rate of ~~1.5%~~ per month, otherwise at the highest lawful contract rate. *1.0% JCH BJK*

15. TAXES: Lessee, or Lessor at Lessee's expenses, shall promptly report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Locomotive(s) and including without limitation amounts payable under Section 3 hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotive(s) and whether or not the same shall be assessed against or in the name of Lessor or Lessee. Should Lessee claim an exempt status from above mentioned taxes, proof of exempt status must accompany this lease in its' executed form.

16. DEFAULT: If the Lessee, after (5) business days notice of default, shall fail to carry out and perform any of the obligation on its part to be performed under this lease, or if at law or in equity, including without limitation the right immediately to repossess the Locomotive(s), to remove the Locomotive(s) from Lessee's service, to terminate this lease, and recover any and all damages sustained as a result of Lessee's default. If Lessor shall terminate this lease pursuant to this Section, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given are provided by law or in equity.

Should any proceedings be instituted by Lessor for money due to Lessor hereunder and/or for possession

of any or all of the Locomotive(s) or for any other relief, Lessee shall pay Lessor a reasonable sum as attorney's fees. In addition to any remedies provided herein, Lessor shall have all the rights provided to Lessor under Section 1168 to Title 11 of the United States Code and amendments thereto.

17. MISCELLANEOUS: All transportation charges for delivery of the Locomotive(s) to the Lessee shall be borne by Lessee. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations or any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee acknowledge the receipt of a true copy of this locomotive lease Agreement. Lessee will not, by reason of this lease or by any action taken hereunder, assume or have any right or title in and to the Locomotive(s) except as to the right herein, expressly granted it as Lessee.

18. LAWS GOVERNING LEASE: This agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

19. EXECUTION: This lease and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

BY BK Fagundes LLX Rail, Inc.
TITLE President

BY JCH Lee
TITLE VP - FINANCE PHILIP SERVICES
LURIA BROTHERS

SCHEDULE "A"

Lessor shall lease locomotives LLX 150 and LLX 151 with the following equipment:

| LLX 150 | LLX 151 |
|---------------------------------|---------------------------------|
| A. SW1200 | A. SW1200 |
| B. 1200 Horsepower 125 Ton | B. 1200 Horsepower 125 Ton |
| C. 12 cylinder 567BC engine | C. 12 cylinder 567C engine |
| D. 10 KW auxiliary generator | D. 10 KW auxiliary generator |
| E. 6BL brake equipment | E. 26L brake equipment |
| F. D77 traction motor | F. D77 traction motor |
| G. AAR style truck assembly | G. AAR style truck assembly |
| H. Roller bearing wheel journal | H. Roller bearing wheel journal |

The rental sum is Eight thousand Two hundred fifty dollars (\$8,250.00) for each month for both locomotives.

**AMENDMENT TO LOCOMOTIVE LEASE AGREEMENT DATED AUGUST 1, 1997
(THE "AGREEMENT") BY AND BETWEEN LLX RAIL, INC. AS LESSOR
("LESSOR") AND ~~PHILIP SERVICES CORP / LURIA BROTHERS~~ ("LESSEE")**
Philip Metals Inc.

Lessor and Lessee hereby agree to amend the Agreement as follows:

1. The fifty-nine (59) monthly rental payments for both Locomotives, commencing with the rental payment due on January 17, 1998 through and including the monthly rental payment due on November 17, 2002, shall each be decreased by the amount of \$1,500.00, from \$8,250.00 each to \$6,750.00 each.
2. Lessee shall receive a separate monthly invoice from Lessor in the amount of \$1,500.00 with respect to a separate agreement between Lessor and Lessee under which Lessor performs certain maintenance services on the Locomotives (the "Service Agreement").
3. Lessee's obligations to make the aforesaid monthly rental payments to Lessor or its assignee (the "Assignee") are absolute, irrevocable and unconditional and are independent of Lessee's use or enjoyment of the Locomotives or the performance by Lessor of any if its obligations under the Agreement, the Service Agreement or otherwise. Lessee shall make all such rental payments to Lessor or the Assignee, without abatement, regardless of any cause or reason whatsoever, and will not assert against the Assignee, any defense claim, set-off, recoupment, abatement or other right, existing or future which Lessee may have against Lessor or any other person or entity.
4. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. All of the terms, conditions and provisions hereunder shall be deemed to be an indivisible part of the Agreement. Except for the amended terms and conditions as outlined hereinabove, there are no other modifications or amendments to the Agreement which remains in full force and effect.

Lessor:
LLX Rail, Inc.

By: B.K. Forquy
Title: President
Date: 1-21-98

llx.philip-luria-bros.amd

Lessee:
Philip Services Corp./
Luria Brothers

By: J.C. Luria
Title: VP
Date: 17 Jan 98

CERTIFICATE OF AUTHENTICATION

THE UNDERSIGNED HEREBY CERTIFIES that the copy of the Locomotive Lease Agreement and Amendment to Locomotive Lease Agreement are true and correct copies of those which have been delivered to Charter Financial, Inc. by LLX Rail, Inc. in connection with Locomotive Lease Agreement by and between LLX Rail, Inc., an Illinois corporation, as Lessor and Philip Metal, Inc./Luria Brothers as Lessee.

Dated this 3rd day of February 1998

CHARTER FINANCIAL, INC.



Brian Twomey
Vice President

STATE OF NEW YORK, COUNTY OF NEW YORK

ss:

On the 3rd day of February, 1998 before me personally came Brian Twomey to me known, who, being by me duly sworn, did depose and say that he is the Vice President of Charter Financial, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.



Notary Public

STEWART ABRAMSON
Notary Public, State of New York
No. 02AB5039736
Qualified in Rockland County *98*
Commission Expires Feb. 21, 19.....